IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CRIMINAL REVISION APPLICATION NO.387 OF 2005

1. Master Sandesh alias Tinku
   Rajendra Chowdhary,
   age: about 7 years,
   occupation: education,
   through petitioner No.2
   as next friend and guardian
   his mother.

2. Mrs. Chayabai Rajendra
   Chowdhary, age: 33 years.
   occupation: household

Both residing at
c/o Jagdish D. Sonawane,
Near Lions Club, 128/5B,
Dattawadi, Pune-411 030. .... Petitioners

- Versus -

1. Shri Rajendra Amrutrao
   Chowdhary, age: about 36,
   occupation: service and
   doctor, residing at
   Gurukrupa, Shree Krishna
   Colony, Station Road,
   Near New Court, Amalner,
   District: Jalgaon.

2. State of Maharashtra .... Respondents

Shri A.M. Joshi for the Petitioners.

CORAM: R.M.S. KHANDEPARKAR &
Mrs. ROSHAN DALVI, JJ.

DATED: MARCH 20, 2006

ORAL ORDER (Per R.M.S. Khandeparkar, J.):

1. Heard the learned Advocate for the petitioners The petitioners challenge the order dated 24-8-2005 passed by the Family Court at Pune whereby it is held that it

has no jurisdiction to entertain the application filed by the petitioners and the proper forum is the Court of the Judicial Magistrate, First Class, Vadgaon-Maval, Pune.

2. The challenge to the impugned order is on three counts. Firstly, that Section 126(1) of the Code of Criminal Procedure, 1973, hereinafter called as "the Code", speaks of the proceedings under Section 125 of the Code to be taken against any person in the district and undisputedly the area which comes under the jurisdiction of the Judicial Magistrate, First Class, Vadgaon-Maval and the area which comes under the jurisdiction of the Family Court, Pune are situated within the territorial limits of the District of Pune and therefore the application which has been filed in a Court situated within the territorial limits of the District of Pune cannot be said to have been filed in the Court having no jurisdiction to entertain an application under Section 125. Secondly, Section 462 of the Code clearly provides that no finding, sentence or order of any Criminal Court shall be set aside merely on the ground that the proceedings in the course of which it is arrived at or passed, took place in a wrong sessions division or district, unless there is a case of failure of justice. Reliance is sought to be placed in that regard in the decision of the Apex Court in the

matter of **Smt. Raj Kumari Vijh v. Dev Raj Vijh,** reported in AIR 1977 SC 1101. Thirdly, it is the contention on behalf of the petitioners that the evidence recorded before the Family Court includes the evidence on merits of the case of the petitioners and the entire evidence having been placed before the Family Court, in the absence of prejudice being shown to have been caused to the respondent, the Family Court was not justified in refusing to exercise its jurisdiction under Section 125 of the Code in relation to the petitioners' case.

3. It is a matter of record that the petitioners had been proved to be the residents of Talegaon-Dhabade in another proceeding before the Court between the same parties which took place prior to the present proceedings. In the case in hand, apart from oral claim by the petitioner No.2 that she has been residing with her brother at Pune, undisputedly, no other evidence has been produced to establish her claim about her residence within the territorial limits of the Family Court at Pune. Being so, the finding of the Family Court that the petitioners had been residing at Talegaon-Dhabade and therefore the proper forum to institute the proceedings for maintenance under Section 125 of the Code would be the Court of the Judicial Magistrate, First Class, Vadgaon-Maval, Pune cannot be found fault

with.

4. Undoubtedly, Section 126(1) of the Code provides that proceedings under Section 125 may be taken against any person in any district, or where he is, or where he or his wife resides, or where he last resided with his wife, or as the case may be, with the mother of the illegitimate child. Considering the same, the proceedings under Section 125 will have to be instituted within the territorial limits of the district of residence of the husband or the wife, as the case may be. However, the jurisdiction of the concerned Court to entertain such an application would essentially depend upon the area earmarked for the territorial jurisdiction of the respective Court of the Judicial Magistrate and that is apparent from the various provisions of the Code.

5. The Section 11(1) provides that in every district not being a metropolitan area, there shall be established as many Courts of Judicial Magistrates of the First Class and of the Second Class, and at such places, as the State Government may, after consultation with the High Court, by Notification, specify. The Section 12(1) of the Code provides that in every district not being a metropolitan area, the High Court shall appoint a Judicial Magistrate of the First Class

to be the Chief Judicial Magistrate. The sub-section (2) thereof provides that the High Court may appoint any Judicial Magistrate of the First Class to be an Additional Chief Judicial Magistrate, and such Magistrate shall have all or any of the powers of a Chief Judicial Magistrate under the Code or under any other law for the time being in force as the High Court may direct. Further, Section 14(1) of the Code specifically provides that, subject to the control of the High Court, the Chief Judicial Magistrate may, from time to time, define the local limits of the areas within which the Magistrates appointed under Section 11 or under Section 13 may exercise all or any of the powers with which they may respectively be invested under the Code. It is subject to such specification that the jurisdiction and powers of any such Magistrate can extend to the whole district and not otherwise, as has been specifically provided under sub-section (2) of Section 14 of the Code. Obviously therefore, separate and independently identified areas in a district can be allotted for the purpose of exercise of jurisdiction by each of the Judicial Magistrates appointed under the provisions of the Code. Undisputedly, in relation to the territorial area which is covered by division of Vadgaon-Maval in the Pune District comes under the territorial jurisdiction of the Judicial Magistrate appointed for that area. Obviously therefore, though

Section 126(1) empowers the filing of the proceedings under Section 125 in the district, at the same time, for the proper administration of justice, the above referred Sections of the Code provide for division of the work within the district in relation to specified areas amongst the Judicial Magistrates. Accordingly, such work having been distributed and the area which is covered by Vadgaon-Maval having been entrusted to a specified Court of Judicial Magistrate appointed for the said area, all the cases arising within the jurisdiction of the said area will have to be dealt with by the Judicial Magistrate, First Class, Vadgaon-Maval, irrespective of the fact that proceedings can be initiated in the district in terms of Section 126(1). The Section 126(1) cannot be read disjunctively but has to be read in the entire scheme of the Code and having so read, the conclusion, as above, is inevitable.

6. At the same time, it is also to be noted that Section 7(1) of the Family Courts Act, 1984, hereinafter called as "the said Act", clearly provides that subject to the other provisions of the said Act, a Family Court shall (a) have and exercise all the jurisdiction exercisable by any District Court or any subordinate civil Court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the explanation; and (b) be deemed, for the

purposes of exercising such jurisdiction under such law, to be a District Court or, as the case may be, such subordinate civil Court for the area to which the jurisdiction of the Family Court extends. The sub-section (2) of Section 7 provides that:

> "(2) Subject to the other provisions of this Act, a Family Court shall also have and exercise
>
> (a) the jurisdiction exercisable by a Magistrate of the First Class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and
>
> (b) such other jurisdiction as may be conferred on it by any other enactment."

The Section 8(a) and (b) of the said Act further provides that

> "(a) no district court or any subordinate civil court referred to in sub-section (1) of section 7 shall, in relation to such area, have or exercise

> any jurisdiction in respect of any suit or proceeding of the nature referred to in the Explanation to that sub-section;
>
> (b) no magistrate shall, in relation to such area, have or exercise any jurisdiction or power under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974);"

Being so, the contention on behalf of the petitioners that bearing in mind the provision of Section 126(1) of the Code, the petitioners would be entitled to file application under Section 125 at any place within the district of Pune, cannot be accepted. Such an application has to be filed before the Court of the Judicial Magistrate, First Class, Vadgaon-Maval in the facts and circumstances of the case.

7. As regards Section 462 of the Code, which corresponds to Section 531 of the old Code of Criminal Procedure, it undoubtedly provides that no finding or sentence or order of any Criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceedings in the course of which it was arrived at or passed, took place in a wrong sessions division, district, sub-division or other local area, unless it

appears that such error has in fact occasioned a failure of justice. The Apex Court while considering the said provision of law in **Smt. Raj Kumari's** case (supra) held that:

> "So where a Magistrate has the "power" to try a particular application under Section 488, and the controversy relates solely to his territorial jurisdiction, there should ordinarily, be no reason why Section 531 of the Code should not be applicable to **the order made by him**."
>
> (emphasis supplied)

8. The applicability of Section 462 of the Code would arise in a case where the order is passed by a Magistrate who lacked territorial jurisdiction to entertain the proceedings. Unless prejudice is shown to have been caused on account of exercise of jurisdiction in wrong district or wrong local area, it may not be sufficient to interfere with such order. In the case in hand, however, there is no such order passed by the Magistrate or even the Family Court, disposing of any matter ignoring the fact that it has no jurisdiction to entertain the matter. On the contrary, in the case in hand, after considering the materials on record, the Family Court has arrived at the conclusion about the

absence of territorial jurisdiction to the Family Court to entertain the matter and therefore has ordered the return of the application to the petitioners, to be filed in the Court of competent territorial jurisdiction. In such a case, the applicability of Section 462 does not arise at all. The Section 462 will apply to a case where a Magistrate or a Court passes an order ignoring the fact that it lacked territorial jurisdiction. In the case in hand, as already stated above, the Court had taken note of the lack of territorial jurisdiction and therefore has refused to entertain the application. Indeed the Apex Court has clearly taken note of this aspect and has further held in Smt. Raj Kumari's case that:

> "The true meaning of section 531 is that while it will not uphold an order passed in proceedings wilfully taken in a wrong place, or enable a Magistrate to confer jurisdiction on himself when he knows that he has no such jurisdiction, there is no reason why a Magistrate, who is otherwise duly empowered to make an order under sub-section (1) of Section 488 of the code, cannot proceed with an application under that sub-section for the purpose of deciding whether he has

> the territorial jurisdiction to entertain the application and to decide the application on the merits if he finds that he has the territorial jurisdiction."

9. The Family Court has clearly arrived at the finding that it lacks the territorial jurisdiction to entertain the matter and therefore has refused to deal with the application on merits while permitting the petitioners to withdraw the application and to present the same in the Court of competent territorial jurisdiction. By no stretch of imagination the order can be said to be either illegal or improper.

10. As regards the last contention, it is to be noted that it is not a mere matter of prejudice. It is a matter relating to the territorial jurisdiction of the Court. Once the Court trying the matter itself realises that it lacks the territorial jurisdiction and arrives at a clear finding in that regard based on the relevant materials on record and therefore refuses to proceed further with the matter, no fault can be found with such an order passed by the Court and in such a case, question of prejudice would not arise at all.

11. For the reasons stated above, therefore, there is

no case for interference in the impugned order and therefore the petition fails and is hereby dismissed with no order as to costs.

(Mrs. Roshan Dalvi, J.) (R.M.S.Khandeparkar, J.)

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